

## MASTER POWER PURCHASE AND SALE AGREEMENT

### AMENDED AND RESTATED COVER SHEET

This *Amended and Restated Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00 ) (“*Master Agreement*” ) is made as of the following date: October 1, 2002 (“Effective Date”) which Master Agreement amends and restates in its entirety the Master Power Purchase and Sale Agreement between Party A and Party B, dated as of May 31, 2001 for periods on and after the Effective Date. The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name (“PG&E Energy Trading - Power, L.P.” or “Party A”)

Name (“California Department of Water Resources, with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System” or “Party B”)

All Notices:

All Notices: DWR/CERS  
Attn: Executive Manager Power Systems

Street: 7500 Old Georgetown Road

Street: 3310 El Camino Avenue, Suite 120

City: Bethesda, Maryland Zip: 20814

City: Sacramento, California Zip: 95821

Attn: Senior Vice President

Attn: Executive Manager Power Systems

Phone: 301-280-6600

Phone: (916) 574-0339

Facsimile: 301-280-6601

Facsimile: (916) 574-2512

Duns: 00-268-7119

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

#### Invoices:

Attn: Director, Power Accounting

#### Invoices:

Attn: Settlements Unit; Doreen Singh

Phone: 301-280-6600

Phone: (916) 574-0309

Facsimile: 301-280-6604 or 301-280-6601

Facsimile: (916) 574-1239

#### Scheduling:

Attn: Scheduling Desk

#### Scheduling:

Attn: Power Dispatcher

Phone: 301-280-6600

Phone: (916) 574--0161

Facsimile: 301-280-6601

Facsimile: (916) 574-2569

#### Payments:

Attn: Director, Power Accounting

#### Payments:

Attn: Cash Receipts Section

Phone: 301-280-6600

Phone: (916) 653-6892

Facsimile: 301-280-6604

Facsimile: (916) 654-9882

**Wire Transfer:**

BNK:  
 Account Title:  
 ABA:  
 ACCT:

**Wire Transfer:**

BNK:  
 ABA:  
 ACCT:

**Credit and Collections:**

Attn: Credit Manager  
 Phone: 301-280-6600  
 Facsimile: 301-280-6601

**Credit and Collections:**

Attn: Credit Manager  
 Phone: 916-574-1297  
 Facsimile: 916-574-2512

With additional Notices of an Event of Default to:

Attn: Assistant General Counsel  
 Phone: 301-280-6600  
 Facsimile: 301-280-6060

With additional Notices of an Event of Default to:

Attn: Financial Officer  
 Phone: (916) 574-1297  
 Facsimile: (916) 574-2512

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Tariff FERC Electric Rate Schedule No. 1   Dated January 9, 1998   Docket Number ER98-1370-000

Party B Tariff      Tariff N/A      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

**Article Two**

Transaction Terms and Conditions      ☐ Optional provision in Section 2.4.   If not checked, inapplicable.

**Article Four**

Remedies for Failure to Deliver or Receive      ☐ Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

	<input type="checkbox"/> Cross Default for Party A: N/A	
Events of Default; Remedies	<input type="checkbox"/> Party A: _____	Cross Default Amount \$ _____
	<input type="checkbox"/> Other Entity: _____	Cross Default Amount \$ _____
	<input type="checkbox"/> Cross Default for Party B: N/A	
	<input type="checkbox"/> Party B: _____	Cross Default Amount \$ _____
	<input type="checkbox"/> Other Entity: _____	Cross Default Amount \$ _____

**5.6 Closeout Setoff**

- ☐ Option A (Applicable if no other selection is made.)
- ☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_

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☐ Option C (No Setoff)

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**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
☒ Option C Specify: Annual audited financial statements,

annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

- ☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- ☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_ from S&P or \_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

- ☐ Other:  
Specify:

Specify:\_\_\_\_\_

(e) Guarantor for Party B: Not applicable

Guarantee Amount:\_\_\_\_\_

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
- ☒ Option B Specify: PG&E Energy Trading Holdings Corporation
- ☐ Option C Specify:

(b) Credit Assurances:

- ☒ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
- ☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- ☒ Not Applicable
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if the Credit Rating of Party A's Guarantor falls below \_\_\_\_ from S&P or \_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:  
Specify:\_\_\_\_\_

(e) Guarantor for Party A: Not Applicable

Guarantee Amount:

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**Article 10**

Confidentiality

☐ Confidentiality Applicable

If not checked, inapplicable.

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**Schedule M**☐ Party A is a Governmental Entity or Public Power System☒ Party B is a Governmental Entity or Public Power System☐ Add Section 3.6. If not checked, inapplicable☐ Add Section 8.6. If not checked, inapplicable**Other Changes**Specify, if any: See attached list.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

PG&amp;E ENERGY TRADING - POWER, L.P.

By: PG&amp;E Energy Trading Holdings

Corporation, its sole general partner

CALIFORNIA DEPARTMENT OF

WATER RESOURCES

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

**(a) Definitions.**

(1) Section 1.3 This section has been changed as follows: “‘Bankrupt’ means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, and such petition is not withdrawn or dismissed within 30 days after such filing, (ii) makes an assignment (other than an assignment undertaken in connection with a financing) or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.”

(2) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor “[Intentionally omitted.]”

(3) Section 1.11 is amended by adding the following sentence at the end of the current definition: “The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs.”

(4) Section 1.46 “Potential Event of Default” is deleted.

(5) Section 1.51, “Replacement Price” shall be amended on the fifth line by deleting the phrase “at Buyer’s option” and inserting the following phrase: “absent a purchase”. In addition, the following sentence shall be omitted: “For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.”

(6) Section 1.53, “Sales Price” shall be amended on the fifth line by deleting the phrase “at Seller’s option” and inserting the following phrase: “absent a sale”. In addition, the following sentence shall be omitted: “For the purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another Party at the Delivery Point.”

(7) Section 1.59 is amended by changing “Section 5.3” to “Section 5.2.”

(8) Sections 1.62 through 1.78 are added to Article One as follows:

1.62 “Act” shall have the meaning set forth in Schedule M.

1.63 “Availability Factor” means the percentage (%) calculated in accordance with the Capacity Demonstration Test set forth in Exhibit A.

- 1.64 “CPUC” means the Public Utilities Commission of California or any successor thereto.
- 1.65 “Fund” means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.
- 1.66 [reserved]
- 1.67 “Market Quotation Average Price” shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.
- 1.68 “Market Value” shall have the meaning set forth in Section 5.3.
- 1.69 “Per Unit Market Price” means the applicable price per MWh determined in accordance with Section 5.3.
- 1.70 “Prudent Industry Practices” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric power industry for wind-powered generating facilities during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Industry Practices does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the region covered by the Western Systems Coordinating Council or any other successor or similar organization.
- 1.71 “Qualified Electric Corporation” means an electrical corporation, as defined by the Act, whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody’s and is not negative outlook or Credit Watch from either rating agency at the effective date of such Replacement Agreement; provided, however, that, with the exception of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company, no electrical corporation shall be a Qualified Electric Corporation without Party A’s written agreement.
- 1.72 “Reference Market-maker” means any marketer, trader or seller of, or dealer in, firm energy products whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody’s.

- 1.73 “Replacement Agreement” means any agreement identical to this Agreement excluding provisions relating to Department’s status as a governmental agency or to the original start date(s) of this Agreement, including but not limited to Schedule M, together with such additional changes as Party A and assignee shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation of this Agreement for which there is adequate consideration.
- 1.74 “Replacement Contract” means a contract having a term, quantity, delivery rate, Delivery Point and Product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.
- 1.75 “Settlement Agreement” has the meaning set forth in Section (m) below.
- 1.76 “State” means the State of California.
- 1.77 “2002A Transaction” means the Transaction described in the attached Amended & Restated Confirmation dated October 1, 2002.
- 1.78 “Trust Estate” means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.

**(b) Transactions.** The Transaction shall be in writing and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5.

**(c) Governing Terms.** Section 2.2 is amended by adding the following sentence at the end of the current section:

“Notwithstanding the foregoing, the 2002A Transaction shall be treated as a stand-alone Transaction and accordingly, (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable to the 2002A Transaction, and (b) an Event of Default or Potential Event of Default with respect to any Transaction other than the 2002A Transaction shall not affect the 2002A Transaction. Except for the attached Amended and Restated Confirmation dated October 1, 2002, no provision of any Confirmation entered into pursuant to Section 2.4 shall affect the 2002A Transaction.”

Section 3.2 Transmission and Scheduling. Adds the following sentence: “From time to time, the Parties may agree to bookout Transactions. Bookouts are undertaken as a scheduling convenience and do not modify the terms of any Transaction.”



The following section is added:

3.2.1 Reliability Guidelines: Each Party shall adhere to accepted electric industry practice and, without limiting the foregoing, to the applicable operating policies, criteria and/or guidelines of the North American Electric Reliability Council (“NERC”) and any regional or subregional requirements.

**(d) Declaration of an Early Termination Date and Calculation of Termination Payment.**

(1) Section 5.1 shall be amended by adding the following after Section 5.1(h):

“(i) Any delivery by Seller of energy pursuant to the 2002A Transaction for purchase by a third party, unless the Seller is required to make such third party sale pursuant to applicable law, regulation, order or decree of any state or federal governmental authority. “

(2) The last sentence of Section 5.2 is replaced in its entirety by the following: “The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the “Termination Payment”) which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.”

(3) The following shall be added to the end of Section 5.2 (as amended by clause (1) immediately above): “Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1.”

(4) Section 5.3 is replaced in its entirety by the following:

“5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this

Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The “Present Value Rate” shall mean the sum of 0.50% plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
  - (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
  - (d) In no event, however, shall a party’s Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.
- (5) Sections 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor “[Intentionally omitted.]”
- (6) Section 5.7 Suspension of Performance. Deletes the following language: “or (b) a Potential Event of Default.” Because that clause is deleted, the caption “(a)” also is deleted as no longer necessary.
- (7) Section 8.3 Grant of Security Interest/Remedies. Deletes “or deemed occurrence” from the beginning of the second sentence.
- (e) **Term of Master Agreement.** Add the following sentence to Section 10.1: “The 2002A Transaction shall terminate on the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default”.
- (1) Section 10.2 Representations and Warranties.

- (i) This section has been changed as follows: “it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which it will perform a Transaction”
- (vi) Deletes “or any of its Affiliates”
- (vii) Deletes “or Potential Event of Default”

**(f) Representations and Warranties.** Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.

**(g) Indemnity.** The phrase “To the extent permitted by law” is added at the beginning of the first two sentences of Section 10.4. The word “first” is deleted from the first sentence.

**(h) Assignment.**

(1) In Section 10.5, the phrase “either Party may, without the consent of the other Party (and without relieving itself from liability hereunder)” shall be replaced with “Party A (or, with respect to clause (i) (iv) or (v), Party B) may, without the consent of the other Party” and add the following clauses (iv), (v) and (vi) in the first proviso in Section 10.5: “(iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act; (v) transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated BBB or better by S&P’s Rating Group (a division of McGraw-Hill, Inc.), or its successor, and Baa2 or better by Moody’s, or its successor; or (vi) transfer or assign all of its right, title and interest in the 2002A Transaction to an affiliate of Party A which, at the time of such transfer, owns or controls the output of the units specified in the 2002A Transaction.”

(2) Add the following proviso to the end of Section 10.5: “;provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof.”

**(i) Novation.** Notwithstanding any other limitation on assignment herein, at any time after January 1, 2003, Party A shall, upon the written request of Party B enter into a Replacement Agreement as may be agreed to by a Qualified Electric Corporation. This Agreement shall terminate upon the effective date of the Replacement Agreement. The occurrence of the effective date of the Replacement Agreement shall constitute a novation that shall relieve Department of any liability or obligation arising after the date of termination of the Agreement; provided, however, that if the assignment is later found to be invalid the novation is *void ab initio*. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of the Agreement and that it constitutes a novation for which there is adequate consideration. The effectiveness of such Replacement Agreement shall be subject to the condition precedent that the

California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the Public Utilities Code with respect to such Replacement Agreement and shall have issued an order determining that the charges under such Replacement Agreement are just and reasonable.

If the Qualified Electric Corporation is an affiliate of Party A, Party A's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that, in connection with the just and reasonable review under Section 451 of the Public Utilities Code to be conducted by the CPUC as set forth above, the CPUC will not find Party A, with respect to the Replacement Agreement, to be in violation of CPUC rules, regulations and orders governing affiliate transactions.

If the Qualified Electric Corporation is an affiliate of Party A, Party A's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that the Federal Energy Regulatory Commission shall have determined that the affiliate transaction is just and reasonable under Section 205 of the Federal Power Act.

**(j) Governing Law.** In Section 10.6, "New York" shall be replaced with "California."

**(k) General.** The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

**(l) Additional Provisions.** New Section 10.12 is added to Article 10 as follows:

"10.12.No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

**(m) Conditions Precedent.** Satisfaction of the following requirements shall be a condition precedent to Party A's obligations under this Agreement:

(1) The Settlement Agreement shall have been executed on even date herewith, by and among Party B; Party A; the Governor of the State of California, acting on behalf of all agencies, departments, boards, subdivisions, and commissions of the executive branch of the State of California (including but not limited to the Electricity Oversight Board); the CPUC; and the People of the State of California, by and through the Attorney General of State of California (the "Settlement Agreement").

(2) The CPUC and the Electricity Oversight Board shall have filed with FERC a Notice of Partial Withdrawal, pursuant to 18 C.F.R. § 385.216(a), as contemplated by the Settlement Agreement.

**(n) Schedule M.** Schedule M shall be amended as follows:

(1) In Section A, “Act” will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, , 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code, as amended.

(2) “Special Fund” will mean the Fund.

(3) In Section A, the defined term “Governmental Entity or Public Power System” shall be replaced with the term “Governmental Entity” using the following definition “‘Governmental Entity’ means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System”; and all references to (A) “Governmental Entity or Public Power System” (and cognates) and (B) “Public Power System” (and cognates) in Schedule M shall be replaced with the new defined term “Governmental Entity” (using the applicable cognate).

(4) In Section D, delete Section 3.5 and replace it with the following:

Section 3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.

(5) In Section G, specify that the laws of the State of California will apply.

(6) Add a new Section H, which shall read as follows:

“Section 3.7. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund.”

(7) Add a new Section I, which shall read as follows:

“Section 3.8. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be

diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement.”

(8) Add a new Section J, which shall read as follows:

“Section 3.9. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A.”

(9) Add a new Section K, which shall read as follows:

“Section 3.10. Sources of Payment; No Debt of State. Party B’s obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.”

(10) Add a new Section L, which shall read as follows:

“Section 3.11. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.”

(11) Add a new Section M, which shall read as follows:

“Section 3.12. Fixed Rate Contract. The Parties hereby stipulate and agree that, under the facts and circumstances known to them at this time, this Agreement was entered into as a result of arms’-length negotiations between the Parties. Further, the Parties believe that the rates, terms and conditions of this

Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, and that the rates, terms and conditions of this Agreement will remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term thereof, including any rights under Sections 205 and 206 of the Federal Power Act to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree to make no filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest under the Federal Power Act. The Parties hereby further stipulate and agree that neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement or any Transaction hereunder, or to prevent this Agreement or any Transaction hereunder from taking effect. It is further agreed that, in the event any of the Parties challenges this Agreement for any other reason, they will not dispute the applicability of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and subsequent cases.”

(12) Add a new Section N, which shall read as follows:

“Section 3.13. Consent Agreement. The Parties agree to negotiate in good faith to enter into a Consent Agreement which provides Party B’s consent to the transfer, sale, pledge, encumbrance or assignment of a security interest in this Agreement and the accounts, revenues or proceeds hereof in connection with any financing by Party A, its successor or assignee, upon terms and conditions customary for financings of this type.”

## **MASTER POWER PURCHASE AND SALE AGREEMENT AMENDED AND RESTATED CONFIRMATION LETTER**

This amended and restated confirmation letter shall confirm the Transaction agreed to on October 1, 2002 (the “Effective Date”) between PG&E Energy Trading-Power, L.P. (“Party A”) and California Department of Water Resources, acting solely under the authority and powers created by California Assembly Bill AB1-X, codified as Sections 80000 through 80270 of the Water Code (the “Act”), and not under its powers and responsibilities with respect to the State Water Resources Development System (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Party A

Buyer: Party B

Product: As Available, which means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under an “As Available” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines); (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, and which is not within the reasonable control of, or the result of the negligence of, the Seller, (iii) by Buyer’s failure to perform, (iv) if there is insufficient wind power for the specified units to generate energy or if wind speeds exceed the specified units’ technical specifications each as determined in accordance with Table 2 of the Capacity Demonstration Test, or (v) by scheduled maintenance outages of the specified units. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

Specified Units: Mountainview I Wind Project, having an estimated capacity rating of 44.4 MW consisting of 74 Mitsubishi MWT – 600 turbines located in Riverside County, California and Mountainview II Wind Project, having an estimated capacity rating of 22.2 MW, consisting of 37 Mitsubishi MWT – 600 turbines located in Riverside County, California (each, a “Project” and collectively, the “Projects”).

Contract Quantity: During the Delivery Period, except as specified in the Curtailments section below, Party A shall deliver, and Party B shall receive and pay for, all of the Output (as defined below) of each Project.

For the purposes of this Transaction, “Output” means all electrical energy produced, which may, on an instantaneous basis, be greater or less than the total estimated capacity of 66.6 MW of the Projects, adjusted by the loss factor assigned by the California Independent System Operator or



successor entity ("CAISO") to the Projects. However, Party B's obligations to purchase shall be limited to 75 MWs as measured and metered hourly at the Delivery Point. In addition, in no event shall Party A have the right to procure electric energy from sources other than the Projects for sale and delivery pursuant to this Agreement.

**Delivery Point** The high side of the transformers in the 115kV substation to be built by Party A for the Projects. This substation will allow the Projects to interconnect to the Southern California Edison Devers-Farrell-Windland 115kV transmission line.

**Contract Price:** \$57.00/MWh on and after the Effective Date. Party B shall be responsible for all charges applied to this Transaction by the CAISO except losses (which shall be paid by Party A in accordance the Contract Quantity section).

**Delivery Period:** Beginning on the Effective Date and ending September 30, 2011.

**Scheduling:** By 6:00 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Party A shall provide Party B with an hourly forecast of deliveries. Party A shall update such forecast anytime information is available indicating a change in forecasted Output from the then current forecast. Party A shall prepare such forecasts and updates by utilizing the best wind speed and direction prediction model or service that is commercially available and utilized by other wind producers or purchasers in the vicinity of the Projects, so long as such model or service is available at a commercially reasonable cost. Party A shall determine in good faith which such model or service to utilize after consultation with Party B. Party A shall not be required to update such forecasts more frequently than once per hour. To the extent possible the Parties shall cooperate to automate forecast updates. Party A shall, as agent of Party B, cause the Projects to become a Participating Intermittent Resource pursuant to CAISO Amendment 42. Party A shall remain liable for the costs for which Party A would be responsible hereunder absent a Project becoming a Participating Intermittent Resources ("base costs"), such as forecast fees. Party B shall be responsible for any and all incremental costs which are in excess of the base costs that Party A incurs as a result of the Projects becoming a Participating Intermittent Resource, such as additional forecast fees not included in base costs or the cost of installation and maintenance of any required equipment.

Party A shall be the designated Scheduling Coordinator (as defined in the CAISO tariff) for the Projects and shall be responsible for scheduling the forecast of Output into the CAISO during the Delivery Period. Party A shall submit schedules and any updates to such schedules to the CAISO based on the most current forecast of Output consistent with all scheduling protocols of the CAISO. Party B shall be responsible for any imbalance charges or penalties payable to, and will receive any credits from, the

CAISO as the result of differences between actual generation and scheduled as calculated in accordance with the Billing Adjustment section below. At any time, Party B may direct Party A to submit schedules to the CAISO that are different from the current forecast, and that, in the determination of Party B, will minimize the risk of imbalance charges to Party B.

**Operating Procedures:** The Parties shall agree upon written operating procedures (“Operating Procedures”) addressing how the Parties will perform their respective obligations under this Transaction, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Maintenance Outage reporting; (4) procedures for daily capacity level and energy output reporting; (5) procedures for record keeping; and (6) scheduling procedures; provided that the failure to agree on Operating Procedures will not relieve the Parties of their respective obligations under this Transaction.

Party A shall operate and maintain the Projects in accordance with Prudent Industry Practices. Party A shall use all commercially reasonable efforts to conduct scheduled maintenance activities in such a manner as to minimize impact on the operation of the Projects from June 1st to September 30th of each year (such as utilizing time periods when lower wind speeds are expected to perform scheduled maintenance activities).

**Curtailments:** At the request of Party B, Party A shall reduce the Projects’ Output during any hour provided that a) Output during such hour is greater than the energy scheduled to the CAISO during such hour, and b) the CAISO has directed the scheduling coordinator for the Projects to reduce the Output of the Projects to manage an overgeneration condition in the CAISO control area (due to a lack of decremental bids from other generation resources). During such curtailments, Party B shall pay Party A the Contract Price for the Output that would have been generated without such curtailment, based upon the latest forecast, as it may be updated in the ordinary course during such Curtailment. In addition, Party A shall reduce a Projects’ Output if notified by the CAISO to curtail deliveries.

**Delivery & Metering:** All Output shall be delivered to Party B at the Delivery Point. All meters and equipment used for the measurement of Output shall be provided, owned, maintained, inspected tested, and read at no cost to Party B by Party A. A copy of the metered output shall be included with each monthly invoice.

**Billing Adjustments:** Billing to Party B shall include adjustments that reflect the imbalance charges and credits resulting in differences between schedules submitted by Party A to the CAISO and Output delivered to the Delivery Point hereunder (“Imbalance Adjustments”). Imbalance Adjustments shall be

calculated by Party A pursuant to CAISO methodologies then in effect and reasonably applied by Party A as if the Projects were the only projects scheduled and delivered to the CAISO by Party A, and not netted against other generation scheduled to the CAISO by Party A.

Party A reserves the right to submit a bill to Party B for Imbalance Adjustments, separate from regular monthly billing for delivery of Output, as soon as the CAISO settlements are finalized. Such bill is due and payable within 10 days of receipt by Party B. Party A shall only credit Party B for positive generation imbalances after Party A receives payment for such imbalance generation from the CAISO.

Special Conditions: All rights and interests in the renewable attributes, emission reductions or credits (offsets) relating to the Projects shall remain the property of Party A.

Early Termination: (a) In the event that during the Delivery Period no energy is generated and delivered to the Delivery Point for a continuous period of twelve (12) months for reasons other than weather related conditions or a valid Force Majeure event, Party B shall in its sole discretion have the right to terminate this Transaction without any further obligations under the Master Agreement.

(b) If an event of Force Majeure prevents either Party from performing its material obligations under this Agreement for more than eighteen (18) consecutive months, either Party may terminate this Agreement without further liability to the other Party.

(c) Commencing on the first (1st) anniversary of the commercial operation date of the Projects, Party B shall in its sole discretion have the right to terminate this Transaction without any further obligations under the Master Agreement in the event Party A fails to achieve an average Availability Factor equal to or greater than seventy-five percent (75%) in accordance with Section 5 of the Capacity Demonstration Test ("CDT") attached hereto as Exhibit A for two consecutive years. If the Availability Factor is not greater than or equal to 75% in accordance with Section 5 of the CDT for any single year, the price of energy sold by Party A will be the lesser of: (i) the Contract Price (\$57/MWh) and (ii) the "SP15" price published in *Megawatt Daily's* Market Report (or if such publication is discontinued, a successor market price index mutually agreed to by the parties) until such time as the Availability Factor is greater than or equal to 75% in accordance with the next CDT.

This amended and restated confirmation letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated October 1, 2002 (the "Master Agreement") between Party A and Party B, and constitutes part of, and is

subject to, the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

PG&E ENERGY TRADING – POWER, L.P.  
By: PG&E Energy Trading Holdings  
Corporation, its general partner

[Party B]

California Department of Water Resources,  
acting solely under the authority and powers  
created by AB1-X, codified as Sections  
8000 through 80270 of the Water Code  
(the “Act”), and not under its powers and  
responsibilities with respect to the State  
Water Resources Development System

By: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_